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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,832	03/22/2001	Richard L. Mueller	5756-0012.30	6135

7590

02/05/2004

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EXAMINER
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SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 02/05/2004

17

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE  
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☒ This application has been examined ☐ Responsive to communication filed on October 28, 2003 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s),        days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |  |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                   |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.                 | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474.     | 6. <input type="checkbox"/> _____  |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-9 \_\_\_\_\_ are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☒ Claims 1-9 \_\_\_\_\_ are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other \_\_\_\_\_

EXAMINER'S ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spears et al in combination with Narciso, Jr. Spears teaches a device as claimed except the use of a perfusion channel and lumen diameter. Narciso, Jr. teaches a device as claimed except the specific recitation that the fibers are removable and the lumen diameter. It would have been obvious to the artisan of ordinary skill to employ perfusion in the device of Spears et al, since this prevents tissue damage down stream of the treatment or alternatively to employ the manifestly insertable fiber of Spears et al in the device of Narciso, Jr., since Narciso Jr. discusses no attachment of the fibers, and the catheter absent the fibers would be more flexible and thus more easily positioned, and in either case to employ a lumen in the claimed range, since this is an appropriate size to accommodate a guide wire and solves no particular problem in the art, thus producing a device such as claimed.

Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spears et al in combination with Narciso Jr. The teachings of Narciso, Jr. and Spears et al and the motivation for combination and modification thereof are essentially those already set forth regarding claims 6-9. Thus it would have been obvious to the artisan of ordinary skill to combine these old and well known teachings to produce a method such as claimed.

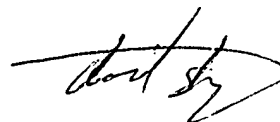
Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spears et al in combination with Narciso, Jr. as applied to claims 1 and 3-5 are above, and further in view of Chen et al. Chen et al teach the use of e.g. hematoporphyrin derivative as a photodynamic therapy compound. It would have been obvious to the artisan of ordinary skill to employ

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hematoporphyrin derivative in the combined method of Narciso, Jr. and Spears et al, since the method of Narciso, Jr. is dependant on no particular compound and since this compound is widely known for its efficacy in PDT, thus producing a method such as claimed.

Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.



**DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330**

Shay/DI

January 20, 2004